

Before the
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Santa Monica Post Office
Santa Monica, California

Docket No. A2013-1

PUBLIC REPRESENTATIVE RESPONSE IN SUPPORT OF
UNITED STATES POSTAL SERVICE MOTION
TO DISMISS PROCEEDINGS

(October 26, 2012)

Pursuant to 39 CFR 3001.21 of the Commission's Rules, the Public Representative hereby responds in support of the Postal Service's motion to dismiss the appeal of the Postal Service's decision to relocate retail and post office box delivery service at its Santa Monica, California Post Office.¹

I. PETITION FOR REVIEW

The Commission received a Petition for Review (Petition) by letter dated September 20, 2012, from United States Congressman Henry A. Waxman (Petitioner). The Petitioner is Representative of California's 30th District which includes the City of Santa Monica. The Petition states that the Postal Service has determined to close the 5th Street retail office in Santa Monica and "consolidate" its operations with the Santa Monica Carrier Annex located on 7th Street in Santa Monica. The Postal Service plans to sell the historic building on 5th street.

Section 404(d)(5) of title 39 provides the Commission authority to review decisions of the Postal Service to close or consolidate post offices. Petitioner argues that the Postal Service's action constitutes discontinuance since the Postal Service's

¹ Motion of United States Postal Service to Dismiss Proceedings, Docket No. A2013-1. October 19, 2012. (Motion to Dismiss).

Handbook PO-101 defines discontinuance as an action where a Post Office is permanently closed or consolidated. Petition at 1. The Petition states the decision to close the facility failed to comply with regulations for post office discontinuances. 39 CFR 241.3. In particular, Petitioner claims the Postal Service failed to comply with the requirements of the rules relating to notice to the community, the effect on the community, and economic savings. *Id.* at 1-2.

Petitioner states the Postal Service did not provide 60-day notice of the proposed closure. *Id.* at 1. Petitioner also claims the Carrier Annex on 7th Street is remotely located and surrounded on three sides by highways and a bus maintenance facility and that pedestrians would have to cross a light rail track to get to the Carrier Annex. It says the community did not receive information about the estimated economic saving from the relocation. The Petition also notes the Postal Service's policy that any facility projects are to comply with the provisions of the National Historic Preservation Act, 16 U.S.C. 470, *et seq.*, as well as two Presidential Executive Orders. It says the Postal Service has failed to demonstrate how it will comply with that policy. *Id.* at 2. The Petition also requests the Commission to suspend efforts to close the 5th Street Post Office pending the outcome of the appeals process. *Id.* at 3.

The Commission instituted this proceeding to consider the Petition and established October 19, 2012 as the deadline for the Postal Service to file the applicable Administrative Record for this appeal and to file any responsive pleading.² On October 19, 2012, the Postal Service filed its Motion to Dismiss, but did not file an Administrative Record.

II. POSTAL SERVICE MOTION TO DISMISS

The Postal Service's Motion to Dismiss argues that its decision to move retail postal services from the Santa Monica Post Office located on 5th Street, within one mile of the Santa Monica Carrier Annex, is a relocation (rather than a discontinuance) of the

² Notice and Order Accepting Appeal and Establishing Procedural Schedule, October 10, 2012.

Santa Monica 5th Street Post Office. Motion to Dismiss at 2. The Postal Service states the new location will offer the same level of service at reduced cost. *Id.* at 8. While the Petition states the 5th Street Post Office has “plenty of parking,” Petition at 2, the Postal Service states the Carrier Annex will provide on street parking whereas the “current location does not have customer parking.” Motion to Dismiss, Exhibit 3 at 2. The Postal Service points out that 39 U.S.C. 404(d)(5) is limited to discontinuances of post offices and not relocations and cites to several Commission orders for support. The Motion to Dismiss concludes the relocation “falls outside the scope of 39 U.S.C. 404(d)(5)” and, accordingly, the Commission “lacks subject matter jurisdiction and should dismiss the appeal.” *Id.* at 1-2.

III. DISCUSSION

A Postal Service determination to “close or consolidate any post office may be appealed by any person served by such office to the Postal Regulatory Commission.” 39 U.S.C. § 404(d)(5). It is well settled that Commission jurisdiction arises only where, the Postal Service’s action constitutes either a “closing” or a “consolidation.” If the action is to relocate a post office, the Commission does not have authority to consider the merits of the appeal.

A series of factually similar Commission cases, most of which are cited by the Postal Service, support its Motion to Dismiss. *Id.* at 5-8. The Commission has long held that a relocation of retail postal operations from one facility to another within the community does not constitute, as a matter of law, a “closing” or “consolidation” for purposes of section 404(d). The following Commission orders are illustrative:

- Docket No. A2012-17, *Venice*, Order Granting Motion to Dismiss, Order No. 1166, January 24, 2012. (Ruling that 39 U.S.C. §404(d) did not apply where the transfer of retail operations to a carrier annex 400 feet away was a relocation of retail services).
- Docket No. A2011-21, *Ukiah*, Order Granting Motion to Dismiss, Order No. 804, August 15, 2011. (Ruling that 39 U.S.C. § 404(d) did not apply

where the transfer of retail operations to a carrier annex one mile away from the main post office was a relocation of retail services);

- Docket No. A2010-2, *Sundance Post Office-Steamboat Springs*, Order Dismissing Appeal, Order No. 448, April 27, 2010. (Ruling that 39 U.S.C. § 404(d) did not apply where the transfer of retail operations to a facility within the same community constituted a relocation or rearrangement of facilities).
- Docket No. A2007-1, *Ecorse Classified Branch*, Order Dismissing Appeal on Jurisdictional Grounds, Order No. 37, October 9, 2007. (Ruling that 39 U.S.C. §404(d) did not apply where the new retail facility was 1.7 miles away in the same community).
- Docket No. A86-13, *Wellfleet*, Order Dismissing Docket No. A86-13, Order No. 696, June 10, 1986. (Ruling that 39 U.S.C. § 404(d) did not apply where the new location was within communities roughly 2-3 miles apart with no defined borders and the new location was 1.2 miles away from the former location)³;
- Docket No. A82-10, *Oceana Station*, Order Dismissing Docket No. A82-10, Order No. 436, (June 25, 1982. (Ruling that 39 U.S.C. § 404(d) did not apply where the new location was four miles away from the former location).

These decisions support the conclusion that the relocation of retail services or rearrangement of retail facilities within a community does not constitute a closing or a consolidation—a prerequisite for an appeal under Section 404(d).

³ The *Wellfleet* Order is instructive as it defines “closing a post office” as used in the statute as the elimination of a post office from a community. It further defines “consolidation” as a change in the management structure of a post office which includes the elimination of the postmaster position. Order No 696 at 2. Neither applies in this case.

Although an appeal to the Commission is precluded by law, the community of Santa Monica has not been without opportunity to comment on the planned relocation. The regulations requiring specific Postal Service procedures for relocations are set out in 39 CFR 241.4. It appears the Postal Service has complied with those requirements. The Postal Service provided initial notice on August 15, 2012 of its decision to relocate retail services and thereafter considered requests for review of the decision from the City of Santa Monica, the Santa Monica Conservancy, the Wilshire Montana Neighborhood Coalition, the Los Angeles Conservancy, the North of Montana Association, and about 40 postal customers. Motion to Dismiss, Exhibit 3 at 1. The Postal Service subsequently issued a written Corrected Final Decision dated October 4, 2012, taking the views of the community into account. It also concluded that the National Historic Preservation Act (NHPA) is not applicable until the Postal Service's action results in an "undertaking" that changes the character or use of building at 5th Street. The Postal Service explained that an "undertaking," will not occur until the Postal Service transfers the property to private ownership.

Given the lack of jurisdiction over appeals of post office relocations, the Commission does not need to reach the Postal Service's point that the Petitioner did not demonstrate the jurisdictional prerequisite requiring Petitioner to be a "person served by such office." *Id.* at 1-2.

IV. CONCLUSION

For the reasons stated above, for lack of subject matter jurisdiction the Commission should grant the Motion to Dismiss and reject the request to suspend the relocation pending conclusion of the appeal.

Respectfully Submitted,

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